

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08KD-061

Kauai

Grant of Term Non-exclusive Easement to Coco Palms Ventures LLC,
for Access Purposes and Cancellation of Grant of Easement Bearing
Land Office Deed No. S-12850 assigned to Coco Palms Ventures LLC
for Road Right-Of-Way Purposes, Wailua, Kawaihau, Kauai, Tax Map
Key: (4) 4-1-003:017 (por.).

APPLICANT:

Coco Palms Ventures LLC, a Foreign Limited Liability Company,
whose business and mailing address is 1919 West Street Suite 100,
Annapolis, MD 21401.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) lands of Wailua situated at Wailua,
Kawaihau, Kauai, identified by Tax Map Key: (4) 4-1-003:017, as
shown on the attached map labeled Exhibit A, and hereafter
referred to as the Subject Property.

AREA:

7574 Square Feet, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: NO

CURRENT USE STATUS:

The Subject Property is currently encumbered by Revocable Permit No. S-7444 held by the Applicant for parking and landscaping purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Ten (10) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states Operations, Repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible of no expansion or change of use beyond that previously existing.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>X</u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u>X</u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Applicant is the owner of the parcel situated adjacent north of the Subject Property, identified as Tax Map Key (4) 4-1-003:007, the site of the former Coco Palms Hotel. Applicant seeks an easement over the subject property for the purpose of providing their parcel with vehicular access to Kuamoo Road, south of the Subject Property. Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The Applicant currently holds an access easement over the Subject Property, as assigned in Land Office Deed S-12850. This easement is located along the eastern edge of the Subject Property, running parallel to Kuhio Highway. The existing easement provides access to Kuamoo Road in close proximity to the intersection of Kuamoo Road and Kuhio Highway.

In 2004, Applicant sought permits from the County of Kauai in order to reconstruct the resort project. During that process, the Department of Transportation-Highway Division (DOT) commented that the location of the existing easement did not meet highway standards and requested that it be moved further west for traffic safety reasons (comments attached as Exhibit "B"). The proposed easement will relocate the access to Kuamoo Road further west, which will satisfy DOT's safety concerns.

In order to accommodate DOT's concerns, the proposed easement must be designed to extend across the Subject Property from the northeast corner to the southwest corner, as the Applicant's parcel can only be accessed from the eastern side. This is due to the presence of a lagoon on the western side of the Applicant's parcel that is registered as a historic site. Thus the proposed easement's location on the subject property would greatly inhibit the subject property's viability for additional utilization. Furthermore, the granting of the proposed easement is not essential in order to provide legal access to the property. The proposed easement would serve to provide more convenient access to Kuhio Highway.

DOT supports the proposed easement as it would increase traffic safety. Between 1986 and 1992, until the closure of the Coco Palms Hotel, there were thirteen accidents at the intersection of Kuamoo and Kuhio Highway. The Applicant has placed the parcel on the market, and the proposed easement would increase the parcel's marketability. Upon the sale of the property, the Applicant will pay DOT an estimated \$5 million to widen Kuhio Highway, identified as Federal-Aid Project No. NH-056-1(50), fronting the parcel to relocate all overhead lines underground, in order to satisfy U.S. Fish and Wildlife and roadwork improvements as defined under the County of Kauai Special Management Area permit requirements. The exact and actual payment amount to the DOT will be based on the awarded general contractor's bid price for

specified work as covered in the Agreement between the State DOT and the Applicant.

Staff recommends that the Board approve a grant of a term easement for a period of ten years rather than a perpetual easement. A term easement would provide the Applicant an opportunity to resolve immediate access issues while preserving the Department's ability to utilize the Subject Property to a greater extent in the future.

AGENCY COMMENTS:

The following agencies were solicited for comments:

State of Hawaii

Department of Health:

Noise will be generated during the construction phase of this project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative rules, Chapter 11-46, entitled Community Noise Control shall not be exceeded unless a noise permit is obtained from the Department of Health.

State Historic Preservation Division:

We believe that "no historic properties will be affected" because:

1. Residential development/urbanization has altered the land.
2. SHPD previously reviewed this project and mitigation has been completed.
3. In the event that historic resources, including human skeletal remains, are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division, Kauai Section, needs to be contacted immediately at (808) 241-3690.

Office of Hawaiian Affairs submitted comments with concerns.

County Of Kauai:

Department Of Water:

No comments to proposed easement.

Department of Public Works:

We have no objections to the subject request.

Planning Department:

Comments are attached as Exhibit "C".

Galen Leong, an attorney representing the Applicant, submitted comments attached as Exhibit "D".

In a letter addressed to Laura H. Thielen, Chairperson of the Board of Land and Natural Resources from Brennon T. Morioka, Ph.D., P.E. Director of Transportation dated May 15, 2009. Dr. Morioka had no objections to the new safer access replacing the existing access, attached as Exhibit "E".

RECOMMENDATION: That the Board:


1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-1-03: 07, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement for a period of ten years encumbering the Subject Property for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key (4) 4-1-003:007, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or

August 28, 2009

assigns of the insurance requirement in writing,
separate and apart from this easement document;

- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Cancellation of Grant of Easement Bearing Land Office Deed No. S-12850 assigned to Coco Palms Ventures LLC.

Respectfully Submitted,



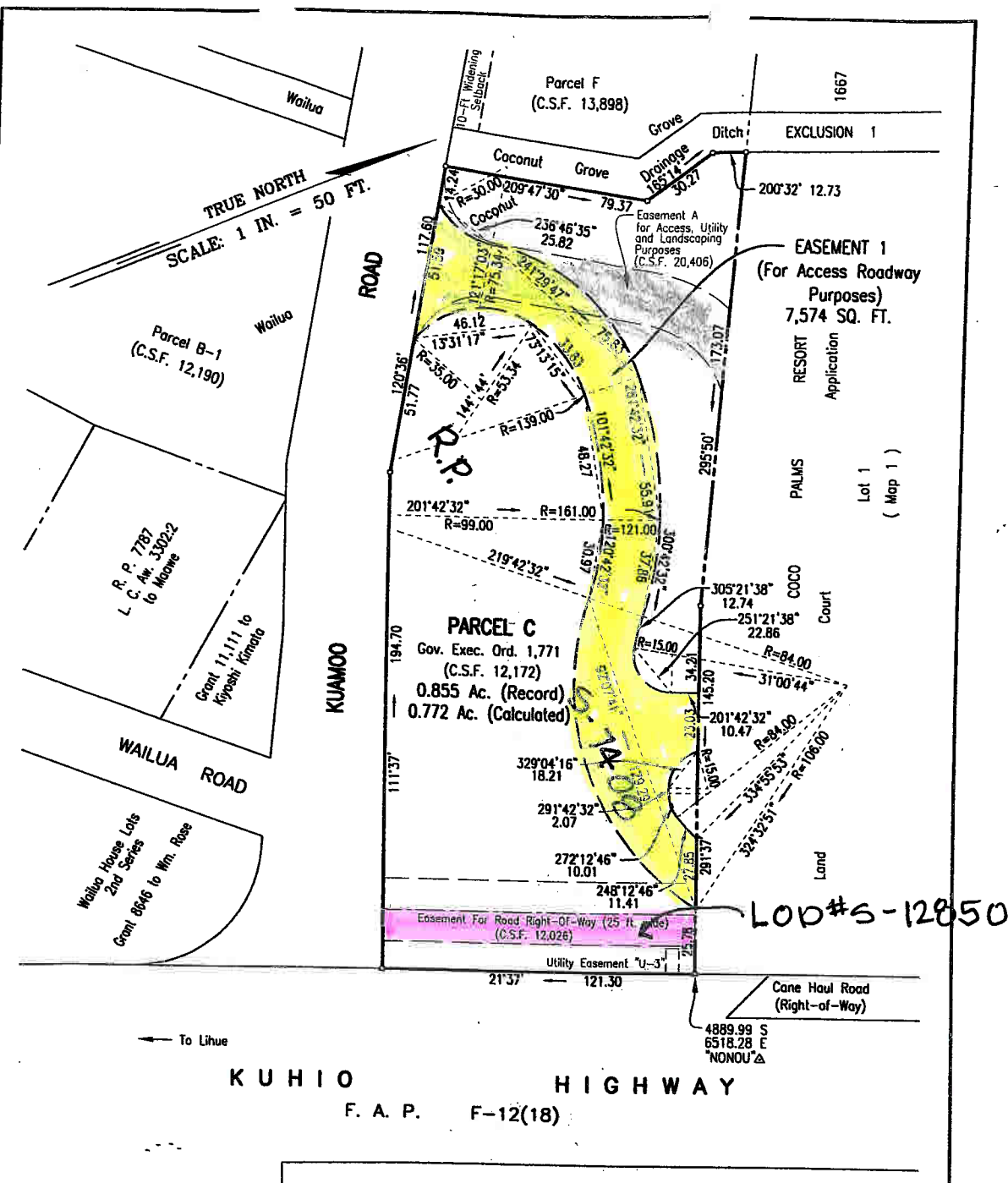
for Thomas Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





This work was prepared by me
or under my direct supervision

Lance T. Stevens
Licensed Professional Land Surveyor
Certificate Number 10733
License expires 4/08

DESIGNATION OF EASEMENT 1 AFFECTING PARCEL C OF WAILUA COCONUT GROVE GOV. EXEC. ORD. 1,771 (C. S. F. 12,172)

WAILUA, KAWAIHAU, KAUAI, HAWAII
Scale : 1 in. = 50 ft.

EXHIBIT "A"



A LINGLE
VERNOR

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

STP(ET)
RODNEY K. HARAGA
DIRECTOR

Deputy Directors
BRUCE Y. MATSUI
BARRY FUKUNAGA
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:
DIR 1634
STP 8.1421

October 27, 2004

Mr. Ian Costa
Director
Department of Planning
County of Kauai
4444 Rice Street
Lihue, Hawaii 96766

Dear Mr. Costa:

Subject: Coco Palms Resort – Proposed Renovation & Redevelopment
Zoning Permit Application (Z-IV-2005-5),
Project Development Use Permit Application (P.D. U-2005-4),
Variance Permit Application (v-2005-1) and
Special Management Area Use Permit Application (SMA(U)-2005-1)
TMK: 4-1-03: por. 4, 5, 11, 17 and 4-1-05: 14, 17

Thank you for your transmittal requesting our review of the subject project.

Our comments are as follows:

1. The TIAR dated May 2004 that was prepared for the subject project contains information that is inconsistent with the Kapaa Traffic Circulation Study, Final Planning Report (KTCS) dated September 2002. The following need to be addressed by revising or supplementing the TIAR:
 - a. We question the conclusion of the TIAR that the intersection of Kuamoo Road and Kuhio Highway currently operates at Level of Service (LOS) D and C during the AM and PM peak hours of traffic. The KTCS states that this intersection operates in the LOS F range, which indicates that vehicles experience high levels of delay. This area has historically operated at congested conditions during the commuter peak periods. The TIAR needs to be revised to identify mitigation measures to improve the operation of the intersection.

EXHIBIT "B"

Mr. Ian Costa
Page 2
October 27, 2004

STP 8.1421

- b. The TIAR states that the Haleilio Road approach currently operates at LOS C and D during the AM and PM peak hours of traffic. The KTCS states that Haleilio Road operates in the LOS F range, which indicates that vehicles experience high levels of delay. Again the traffic volumes have not changed significantly and congested conditions occur during the peak periods. The TIAR needs to be revised to identify mitigation measures to improve the operation of the intersection.
 - c. The TIAR recommended extending the existing eastbound right-turn lane along Kuamoo Road at the intersection with Kuhio Highway to alleviate the existing queuing along Kuamoo Road during the AM peak period of traffic. The KTCS recommended adding an additional right-turn lane on Kuamoo Road at Kuhio Highway. The TIAR needs to be revised to evaluate these alternatives and make a recommendation.
 - d. The KTCS recommended coordinating traffic signal operations on Kuhio Highway between Kuamoo Road and Haleilio Road. The TIAR did not discuss signal synchronization and should address this matter.
2. The TIAR identifies retail space and a tennis complex in the project description but does not address the traffic impact of these uses. The report should be revised to address project impacts from these two operations and identify any required mitigation measures.
 3. The proposed project includes a pedestrian bridge over Kuhio Highway in the vicinity of Seashell Restaurant. The applicant should consult with the Highways Division's Kauai District Office staff on the location and design of the proposed pedestrian bridge. The TIAR needs to be revised to conceptually address the bridge design and requirements (span the right-of-way, conform to ADA standards, etc.) including its construction related traffic impacts and mitigation measures.
 4. We concur with the TIAR recommendation of extending the existing southbound right-turn lane along Kuhio Highway at the intersection with Kuamoo Road to provide adequate storage for right-turning vehicles. The TIAR however should be revised to reflect the widening of Kuamoo Road (as identified in the Kauai Long Range Land Transportation - KLRLTP) along the southern end of the resort site with the required right-of-way.
 5. The project has two existing driveways to Kuamoo Road. The preliminary site plan closes one driveway but retains the driveway further from Kuhio Highway. The TIAR should be revised to evaluate the impacts to Kuamoo Road based on the location of the driveway being retained versus relocating the driveway further mauka.

EXHIBIT

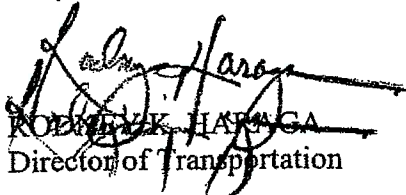
Mr. Ian Costa
Page 3
October 27, 2004

STP 8.1421

6. The TIAR identified problems regarding the project driveways (width, turning radii, sight distances). The TIAR should be revised to address these concerns and identify required mitigation measures.
7. The applicant should be required to provide the right-of-way for the widening of Kuhio Highway including the ramp leading to the bridge over Wailua River. This matter should be discussed with the Highways Division's Kauai District Office staff and then reflected in a revised TIAR.

We appreciate the opportunity to provide comments but reserve the right to provide further comments upon revision to the TIAR.

Very truly yours,


RODNEY K. HARAOKA
Director of Transportation

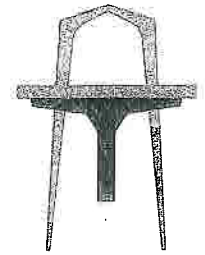
ET/DN:km

c: Rodney Funakoshi, Wilson Okamoto Corporation

bc: HWY-P, HWY-T, HWY-K, STP(ET)

7169-02
November 8, 2004

**WILSON
OKAMOTO
CORPORATION**



Mr. Rodney Haraga
Director of Transportation
State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

Subject: Coco Palms Resort, Wailua, Kauai

Dear Mr. Haraga:

This is in response to your letter of October 27, 2004 to Mr. Ian Costa of the County of Kauai Planning Department (Ref. DIR 1634 STP 8.1421). Our responses incorporate follow-up discussions with your staff from the Statewide Transportation Planning Office and the Highways Division Planning Branch and Kauai District Office at a meeting held on November 5, 2004.

1. We acknowledge the differences in the Level of Service (LOS) ratings between the Kapaa Traffic Circulation Study (2002) and the current Traffic Impact Assessment Report (2004). These differences are attributable to yearly and seasonal variations and signal timing adjustments which may have been made in the intervening years.

1a and 1b. The Kapaa Study had traffic data collected in September-October of 2001, while the current traffic study collected data in May 2004. Notwithstanding, an LOS rating of either D or F reflects poor traffic flow in the area. The main entry for the resort will be a driveway off Kuamoo Road. Apana Road (off of Haleilio Road) will be a secondary access and service entrance for the resort and back-of-house functions. Accordingly, appropriate mitigation measures have been proposed on Kuamoo Road, including an extension of the right turn lane for vehicles going southbound on Kuhio Highway, and extension of the deceleration lane for vehicles on Kuhio Highway turning right onto Kuamoo Road.

c. The Kapaa Study recommends the installation of an additional right-turn lane to be shared with the left-turn movement resulting in the provisions for two right-turn lanes from Kuamoo Road to southbound Kuhio Highway. This double right-turn movement is considered only for the morning periods of traffic when contra-flow operations on Kuhio Highway are in effect. Based on the intersection analysis in the Traffic Report and the improvements in flow resulting from an extension of the right turn lane on Kuamoo Road, provisions for additional mitigation measures at the intersection were not incorporated.

7169-02

Letter to Mr. Rodney Haraga

Page 2

November 8, 2004

- d. The coordination of the traffic signals at Kuamoo Road and Haleilio Road is considered to be a part of regional highway improvements that will improve traffic flow through the Kuhio Highway corridor. The coordination of traffic signals is part of a Traffic Congestion Mitigation Study currently being undertaken by the Department of Transportation (DOT). Within the next year, the DOT is anticipated to implement signal timing adjustments to optimize traffic movements.
2. The retail space and tennis complex are considered to be amenities for hotel guests, thus not generating additional traffic to the surrounding street system. The generation of trips by the retail space and tennis complex that are external to the hotel use are considered to be minimal and therefore negligible in terms of traffic impact.
 3. We acknowledge your Department's support for the pedestrian bridge as a safe means to accommodate pedestrian crossings over Kuhio Highway. We will consult with the DOT Kauai District throughout the planning and design process. The specific components of the proposed pedestrian bridge will be addressed in the design phases of the project. When the bridge design and construction requirements are known, the construction impacts and necessary traffic controls during construction will be identified and implemented.
 4. The Traffic Report is based on an analysis year of 2006 which is the proposed build-out year. The widening of Kuamoo Road is recommended as a long-range regional improvement in the Kauai Long Range Land Transportation Plan and is not expected to occur by this time. We will initiate discussions with the Department of Land and Natural Resources (DLNR) to accommodate the future widening of the road.
 5. We concur that the main entrance driveway on Kuamoo Road should be moved further mauka from Kuhio Highway than the proposed driveway shown near Kuhio Highway. Moving the driveway several hundred feet mauka would serve to reduce conflicts and improve the safety for vehicles exiting onto Kuamoo Road. As requested, we will initiate discussions with the DLNR as well as the DOT Rights-of-Way Branch to implement this recommendation.
 6. The Traffic Report identifies the typical driveway design issues which need to be addressed. These issues will be incorporated in and addressed during the design process.

WILSON

OKAMOTO

CORPORATION

7169-02

Letter to Mr. Rodney Haraga

Page 3

November 8, 2004

7. We acknowledge the need for and will accommodate the expected widening of Kuhio Highway to four lanes along the project frontage. Discussions will be undertaken with the DLNR and the Highways Rights-of-Way Branch to coordinate the availability of the land in this area needed for highway widening. The applicant does not own or control any lands along Kuhio Highway south of Kuamoo Road for any required future widening.

We very much appreciate the cooperation of your staff in helping us to resolve the traffic issues relative to this project. Should you have any further questions or concerns regarding this project, please feel free to contact us at any time.

Sincerely,



Rodney Funakoshi
Project Manager

cc: Ian Costa, Kauai Planning Department
Tommy Oi, Department of Land and Natural Resources, Kauai District

BRYAN J. BAPTISTE
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI
PLANNING DEPARTMENT**

4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

March 20, 2008

Thomas H. Oi
Kaua'i District Land Agent
3060 Iiwa Street, Room 205A
Lihu'e, Hawaii 96766

Subject: Request for Non-Exclusive Perpetual Easement For Access Purposes over Parcel 17, TMK 4-1-3, Coco Palms Ventures LLC

We have had an opportunity to review your letter and plans of March 12, 2008 regarding the above referenced subject matter, and would discourage the establishment of a perpetual easement in the reflected alignment, for the following reasons:

1. The existing Easement A already exists for Access, Utility and Landscaping Purposes, in a better alignment and configuration to handle larger vehicles such as busses turning onto the property. The requested alignment would not appear to be able to stack or store many vehicles turning right from Kuamoo Road.
2. It is a known fact that the applicant is no longer pursuing their permits to reconstruct the resort project. The public land should not be encumbered or land banked by a proposal for access that may or may not proceed forward in the future. There is no need since there is no project.

This request to establish a perpetual easement in the proposed alignment to the detriment of public land is not appropriate at this time. In fact, this public land would be better suited for public beach parking for the Wailua Beach. Thank you for providing this opportunity to comment.



IAN COSTA

Planning Director

EXHIBIT "C"

Ashford & Wriston

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GALEN C. K. LEONG

A Law Corporation

Direct: (808) 539-0479

gleong@awlaw.com

August 18, 2008

Mr. Thomas H. Oi
Kaua'i District Land Agent
3060 Eiwa Street, Room 205A
Lihu'e, HI 96766

Re: **Request for Non-Exclusive Easement For Access Purposes over
Parcel 17, TMK 4-1-3, Coco Palms Ventures LLC**

Dear Mr. Oi:

We have been asked to comment on the letter dated March 20, 2008, from Ian Costa, Planning Director, County of Kauai, regarding the pending request for a non-exclusive perpetual easement for access purposes referenced above which has been requested by Coco Palms Ventures LLC.

The perpetual easement being sought would relocate the main entrance access into the Coco Palms project from Kuamoo Road, which at present is just 10' +/- from the intersection of Kuamoo Road and Kuhio Highway, to a new location which is further mauka by approximately 150 feet from its present access point, both as shown on the attached map previously submitted with the application. This relocation was requested by the Department of Transportation, State of Hawaii, because it would serve to reduce conflicts caused by the existing access nearly on top of the Kuhio/Kuamoo intersection and improve safety for vehicles entering or exiting the project from Kuamoo Road. The new location has been reviewed with and is supported by the Department of Transportation.

This realignment is also essential to provide improved access to the proposed configuration of buildings in the Coco Palms project which would be redeveloped either by Coco Palms Ventures LLC or by any other entity which may pursue the redevelopment of the Coco Palms project. The existing Easement A is deemed no longer to be a viable access easement for the redevelopment of the project either under the present proposed redevelopment plan or any alternative plans for redevelopment of the project which may be presented in the future because Easement A leads to an area which is deemed to be too close to the historic lagoons situated on the contiguous parcel which forms a part of the project site. See the excerpt attached from the filed Condominium Map

EXHIBIT "D"

HONOLULU, HAWAII
Mailing Address:
Post Office Box 131
Honolulu, HI 96810

Street Address:
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, HI 96813

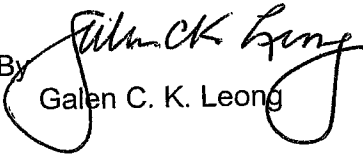
Tel: (808) 539-0400
Fax: (808) 533-4945
Email: atty@awlaw.com
www.ashfordwriston.com

Mr. Thomas H. Oi
August 18, 2008
Page 2

For the above-stated reasons, Coco Palms Ventures LLC requests that the Department of Land and Natural Resources proceed with the approval of the request for a non-exclusive perpetual easement.

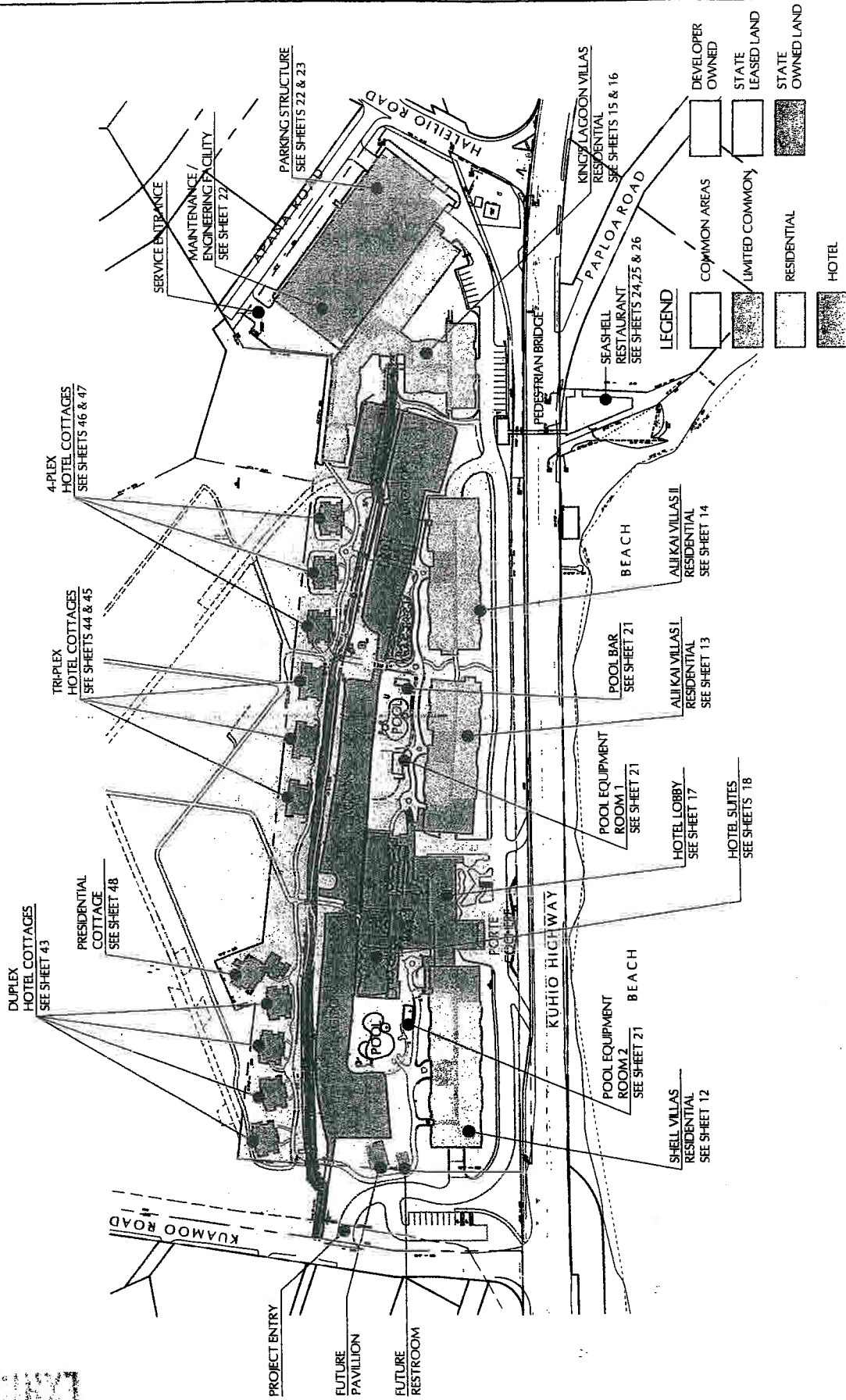
Very truly yours,

ASHFORD & WRISTON,
A Limited Liability Law Partnership LLP

By 
Galen C. K. Leong

GCKL:isk
Enclosure

cc: Philip Ross
Michael Swanson
Rodney Funakoshi



ENLARGED SITE PLAN

• SEE ENLARGED BUILDING PLANS
 FOR COMPLETE INFORMATION

LINDA LINGLE
GOVERNOR


BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

MAY 15 2009

IN REPLY REFER TO:
HWY 2.1910

TO: THE HONORABLE LAURA H. THIELEN, CHAIRPERSON
DEPARTMENT OF LAND AND NATURAL RESOURCES

FROM: BRENNON T. MORIOKA, Ph.D., P.E. 
DIRECTOR OF TRANSPORTATION

SUBJECT: KUAMOO ROAD ACCESS TO COCO PALMS RESORT
WAILUA, KAUAI, HAWAII

Attached is a right-of-way map showing DLNR's Parcel C and the proposed layout of Road "A" connection to Kuamoo Road.

Once the existing resort driveway to Kuamoo Road in proximity to Kuhio Highway is closed off, the replacement driveway connection should make for a safer turning movement. As such, we have no objections to the proposed layout plan.

If you have any questions, please call Gary Yamamoto at 587-2187 or by email at gary.t.yamamoto@hawaii.gov.

Attachment

c: Thomas Oi, DLNR (Land Div.) Kauai
Phillip Ross, Coco Palms Ventures LLC

4/21/09

MAY 20 2009

4/21/09

EXHIBIT "E"

